the magistrate that he is not obliged, in answer to the charge against him, to make a statement which incriminates him, and that what he says may be used in evidence against him.

"(4) In any proceedings any confession, which is by virtue of this section inadmissible in evidence against the person who made it, shall be inadmissible against him if he or his representative adduces in those proceedings any evidence, either directly or in cross-examining a witness, of any statement, verbal or in writing, made by the person who made the confession, either as part thereof or in connection therewith, if such evidence is in the opinion of the officer presiding at such proceedings favourable to the person who made the confession."

Paragraph 4

106. All prisoners, including persons detained in juvenile training centres, are to be kept under discipline appropriate to persons of their ages and descriptions, and are to be given training and instruction which will lead to their reformation.

Paragraph 7

107. Section 12 (5) of the Constitution provides that no person who shows that he has been tried by a competent court and either convicted or acquitted shall be tried again for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal. Subsection 6 states that no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

108. Section 162 (2) (c) of the Criminal Procedure and Evidence Act states that an accused person may plead that he has already been convicted or acquitted of the offence with which he is charged.

Article 15

Paragraphs 1 and 2

109. In Lesotho criminal law, the principle of non-retroactivity is provided for in section 12 (4) of the Constitution, which states that no person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

Paragraph 2

110. What happens when there is a change in law during the trial is not clear from our point of view. We need to do further research.

Article 16

111. The moment at which legal personality is acquired under the law is also not clear, but it could be implied from the wording of section 260 (1) of the Criminal Procedure and Evidence Act that it is birth. The section reads as follows: "On the trial of a person charged with murder or culpable homicide of a newly born child, the child shall be deemed to have been born alive if it is proven to have breathed, whether or not it has an independent circulation, and it shall not be necessary to prove that the child was, at the time of its death, entirely separated from the body of the mother."

Article 17

Paragraphs 1 and 2

112. The Constitution provides in section 11:

"(1) that every person shall be entitled to respect for his private and family life and his home.

"(2) nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

"(a) in the interest of defence, public safety, public order, public morality or public health; or

"(b) for the purpose of protecting the rights and freedoms of other persons.

"(3) a person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2), except to the extent to which he satisfies the court that provision or, as the case may be, the thing done under the authority thereof does not abridge the right guaranteed by subsection (1) to a greater extent than is necessary in a practical sense in a democratic society in the interest of any matters specified in subsection (2) (a) or for the purpose specified in subsection (2) (b)."

113. Under (a) and (b) above the National Security Service and other security agencies may interfere with a person's privacy, including mail and telephone, if it is in the interest of the State.

114. In Lesotho the police keep some data on criminals, but there is no elaborate data bank on individuals.

Article 18

Paragraph 1

115. Article 13 (1) of the Constitution guarantees freedom of conscience. It states that every person shall be entitled to, and (except with his own

consent) shall not be hindered in his enjoyment of, freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance. The Constitution further provides in subsection (2) that every religious community shall be entitled, at it own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

Paragraph 2

116. Section 13 (4) of the Constitution states that no person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

Paragraph 3

117. Subsection 5 states that nothing contained in or under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question is:

(a) In the interest of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion.

118. In Lesotho there is no official/State religion. The main religion in Lesotho is Christianity, which is constituted by the following denominations: Roman Catholic Church; Lesotho Evangelical Church; Anglican Church of Lesotho; Methodist Church; Churches of Zion; Independent Pentecostal/Revivalist Churches.

119. Many Basotho still believe in the African traditional beliefs. There is also the Islamic faith, and the Baha'i faith, which has been in Lesotho since 1954. Statistics on these religions are not readily available. The law does not restrict the right to freedom of association. The Registrar General at the Law Office received and processed 95 applications for registration of societies in 1992, 90 in 1993, 95 in 1994 and 95 in 1995. The figures for 1996 were not complete as at the time of preparing the report. In practice, every application which satisfies the requirements of the Societies Act, 1966 is registered. Where the information supplied by the applicant is inadequate or where the law is not complied with, the Registrar General advises the applicant accordingly and gives him/her time to rectify the papers. Once every thing is in order, the society in question is registered. See also under article 22 below.

Article 19

Paragraphs 1 and 2

120. The Constitution provides for this right in section 14 (1), to the effect that every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any other person or class of person) and freedom from interference with his correspondence.

Paragraph 3

121. The restrictions on the right of freedom of expression are contained in section 14 (2) of the Constitution, which states that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interest of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) For the purpose of imposing restrictions upon public officers.

122. It should be pointed out that indecent, obscene or objectionable literature may not be imported in Lesotho - see sections 22 (3) and 124 of the Customs Proclamation No. 67 of 1956. The right to freedom of expression may not be invoked by a defendant on a charge of sedition as was held in the case of Rex v. Chief Evaristus Retsilisitsoe Sekhonyana CRI/T/36/94, where the accused was charged with the offence of contravening section 4 (1) (b) as read with section 3 (1) (i), (ii), (iii) and (iv), of the Sedition Proclamation No. 44 of 1938. The court held that the accused had a seditious intention and accordingly found him guilty, and sentenced him to pay a fine of R 200 or to serve two years' imprisonment.

123. The Printing and Public Act No. 10 of 1967 as amended is the principal law governing publication of documents and information. It does not deal with the registration and regulation of journalists. The current unwritten ministerial policy provides for provisional and yearly accreditation of journalists. No fee is paid for provisional accreditation, while M 15 is paid for yearly accreditation. The Ministry of information and Broadcasting held a Media Policy Workshop on 6 and 7 March 1997. The objectives were to encourage the growth of free, independent and pluralistic media in Lesotho, which implies that the media should be independent from government control, and an

end to media monopolies of any kind, including that of the Government and other powerful sectors of society; protection of the rights of all citizens regardless of status and, in accordance with the provisions of the Constitution, the right to seek, receive and impart ideas by using any and all means of communication. The policy also seeks to ensure that all media have access to public information, and to review and encourage the repeal of laws and discourage the passage of laws which hinder freedom of expression and the media.

Article 20

Paragraphs 1 and 2

124. Proclamation No. 44 of 1938 which deals with sedition seems to cover the requirements of this article. In particular section 3 (1) states that a seditious intention is an intention:

"(i) to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, Her heirs or successors, or the Government of the Territory as by law established [since independence in 1966 Her Majesty has been replaced by His Majesty the King]; or

"(ii) to excite Her Majesty's subjects or inhabitants of the Territory to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Territory as by law established; or

"(iii) to bring into hatred or contempt or to excite disaffection against the administration of justice in the Territory; or

"(iv) to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of the Territory; or

"(v) to promote feelings of ill will and hostility between different classes of the population of the Territory."

125. Section 4 (1) creates the offences. It provides that "any person who

"(a) does or attempts to do or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

"(b) utters any seditious words;

"(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;

"(d) imports any seditious publication, unless he has no reason to believe that it is seditious, shall be guilty of an offence and liable on conviction for a first offence to imprisonment for two years or to a fine not exceeding 200 rands or to both such improvement and fine, and for subsequent offence to imprisonment for three years, and any seditious publication shall be forfeited to the Crown."

In the case of Rex v. Chief Evaristus Retselisitsoe Sekhonyana CRI/T/36/94, the High Court found the accused guilty of contravening section 4 (1) (b).

Article 21

126. Section 15 of the Constitution provides as follows:

"(1) That every person shall be entitled to and except with his own consent shall not be hindered in his enjoyment of freedom of peaceful assembly, without arms, that is to say, freedom to assemble with other persons.

"(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

"(a) in the interest of defence, public safety, public order, public morality or public health;

"(b) for the purpose of protecting the rights and freedoms of other persons; or

"(c) for purposes of imposing restrictions upon public officers."

127. As far as violence against peaceful and unarmed demonstrators is concerned, there was an incident on 17 August 1994, when peaceful unarmed demonstrators were fired at in front of the King's Palace, during the Lesotho constitutional crisis in which people were killed. After restoration of constitutionality to the country, it was provided for in the memorandum of understanding, as one of the conditionalities, that those responsible for the killings be amnestied. The Government has, however, made it clear that victims or their next of kin will not be prejudiced in their claim for compensation (see paragraph 59 above).

Article 22

128. Freedom of association is guaranteed in the Constitution under section 16, which provides that every person shall be entitled to and (except with his own consent) shall not be hindered in his enjoyment of freedom to associate freely with other persons for ideological, religious, political, economic, labour, social, cultural, recreational and similar purposes, except in the interest of defence, public safety, public order, public morality or public health, etc.

129. The Labour Code Order 24 of 1992 provides in section 6 that freedom of association shall be guaranteed for all workers, employers and their respective organizations in accordance with the provisions of the Code, in particular parts xiii-xx. (It must, however, be noted that in the interest of security and social stability, parts III.D and part V of the Code do not apply to a public officer.) Those parts deal with the Labour Court and contracts of employment, termination, dismissal and severance pay. See Legal Notice No. 22 of 1995.

130. The Societies Act No. 20 of 1966 provides in the preamble that it is intended to provide for the registering of societies, for the consequences of failure to register societies and for dissolving unlawful societies, to the extent that is necessary in a practical sense in a democratic society in the interest of public safety, public order, public morality and for protecting fundamental human rights and freedoms, and to make provision for related matters. Registration of societies is provided for in section 6, which states that:

"(1) On and after the appointed date any society, including a society which is excluded by the provisions, may apply to the Registrar General for registration and the application shall be made in accordance with rules made under section 30.

"(2) The Registrar General upon application by a society may order that the society be registered or may refuse to make such an order in pursuance of the provisions of section 7.

"(3) A person aggrieved by a decision of the Registrar General under this section may within 21 days thereafter appeal against that decision to the High Court.

"(4) The Registrar General shall upon payment of the fee prescribed in the schedule issue a certificate in respect of every registration effected in compliance with the judgement of the High Court on appeal under section 3."

131. Section 7 further empowers the Registrar General to reject certain applications, as follows:

"(1) The Registrar General shall not refuse to order that a society be registered under this Act unless:

"(a) the application for registration does not comply with the requirements of this Act or any rules made under section 30 or which contain provisions contrary to law; or

"(b) the purpose of the society is unlawful or contrary to the interests of public safety, public order, public morality or prejudicial to fundamental human rights and freedoms; or

"(c) the name of the society is identical with that which a society in existence is already registered, or so closely resembles that name as to be calculated to create the impression that the two societies are one and the same; or

"(d) the provisions of this Act and the rules of the society are insufficient to provide for its proper management and control.

"(2) If a society is registered in conflict with the provisions of subsection (1), the Registrar General may notify the society of that conflict, and the society shall within 30 days after the date

of that notice make such changes as may be necessary to remove the conflict unless otherwise ordered by a court of competent jurisdiction.

"(3) A society may not, without the consent of Motlotlehi, be registered by a name of Motlotlehi, be registered by a name which includes the words 'Royal' 'Crown' 'Government' or any other word which imports or suggests that it enjoys the patronage of Her Majesty or Motlotlehi or the Governments of the United Kingdom or Basutoland.

"(4) If a society is registered in conflict with the provisions of subsection (3) the Registrar General may notify the society of that conflict and the society shall change its name within 30 days from the date of that notice unless otherwise ordered by a court of competent jurisdiction.

"(5) If a society does not make any change required under subsection (2) or (4) the Registrar General shall after a further 30 days, cancel the registration of that society unless otherwise ordered by a court of competent jurisdiction."

The number of societies turned down for registration was not available at the office of the Registrar General because more often than not rejection was provisional, due to a minor failure to comply with the requirements laid in the Societies Act and Regulations. As soon as the defects are rectified the society in question is to be registered.

132. Statistics on societies registered:

Year	Number
1992	95
1993	90
1994	95
1995	110

Article 23

Paragraphs 1 and 2

133. Section 11 of the Constitution provides that every person shall be entitled to respect for his private and family life and his home, except in the interest of defence, public safety, public order, public morality or public health, etc.

134. The Marriage Act No. 10 of 1974 provides in the preamble that the Act is intended to make provision for the solemnization and registration of marriages, thus protecting the institution of the family.

Paragraph 3

135. Section 3 of the Marriage Act provides that no person may be compelled to enter into a contract of marriage with any other person or to marry against his or her wish.

Paragraph 4

136. Under our Roman Dutch Law, the husband is the administrator of the joint estate. The wife is considered to be a minor. This is confirmed by the case of Kurubally v. Kurubally 1982-1984 LLR p. 377.

137. The Matrimonial Causes Jurisdiction Act No. 21 of 1978 was intended to bring about equality in instituting proceedings in court by women, who hitherto had no right to do so. Section 2 of the Act states that:

"(1) without prejudice to the jurisdiction which the High Court otherwise has, the High Court shall have jurisdiction to entertain an action instituted by a wife against her husband:

"(a) for divorce, restitution of conjugal rights or judicial separation if the wife has been ordinarily resident in Lesotho for a period of one year immediately prior to the date on which the proceedings are instituted and if:

"(i) the husband has deserted the wife and has departed from Lesotho or has been deported, and was immediately prior to the desertion or deportation domiciled in Lesotho; or

"(ii) in an action for judicial separation, the husband is at the date resident in Lesotho;

"(b) who is not domiciled in Lesotho, for divorce or restitution or conjugal rights if:

"(i) immediately prior to the marriage the wife was domiciled in Lesotho; and

"(ii) she was ordinarily resident in Lesotho for the period of one year immediately preceding the date on which the proceedings are instituted.

"(2) Any issue in the proceedings instituted under this section shall be determined in accordance with the law which would be applicable if both parties were domiciled in Lesotho at the time of the proceedings."

138. The Government of Lesotho is concerned about the population growth rate of 2.6 per cent per annum. The Government developed a National Population Policy in June 1994. This demonstrated the Government's commitment to reduce the burgeoning population growth rate. The population policy envisages an intermediate demographic goal within the framework of its long-term goal of

achieving two children per couple by the year 2011. This will necessitate adequate provision of family planning/MCH services coupled with information, education and communication of policy measures to create an enabling environment for the adoption of a small-family norm (see Lesotho National Population Policy, June 1994). Implementation of this policy is on halt to allow for further consultations with the stakeholders and to review the implementation structures.

Article 24

Paragraphs 1 and 2

139. The Children's Protection Act No. 6 of 1980 defines a child as being an unmarried person under the age of 18 years; no reference is made to race, colour, sex, language, religion, national or social origin, property or birth.

140. The inter-ministerial committee which deliberated on the draft report felt that the concept of a single parent seems to be foreign, because the children of an unmarried woman belong to her father. There was, however, a feeling that such children are discriminated against, e.g. such a child may inherit from a natural parent, but may not inherit under customary practices. It was nevertheless conceded that in all practicality single parents exist in Lesotho, particularly where, according to a UNESCO study, 30 per cent of all households are headed by women. Despite this these women are required to get their husband's consent in matters affecting their children, e.g. procurement of a passport.

141. The Registration of Births and Deaths Act No. 22 of 1973, which is intended to consolidate laws relating to birth and death, makes provision for compulsory registration of the birth of a child, whether born alive or stillborn, and of the death of any person. Section 4 (1) states that the office of the Registrar General shall keep a register of all births and deaths occurring in Lesotho. Subsection (2) provides that the Registrar General shall be the Registrar of births and deaths, while section 8 states that separate books shall be kept by each district registrar, to be called the "birth register" and the "death register", and there shall be transcribed in them such information as to birth and deaths as is prescribed. Sections 11 and 12 provide for the duty to notify the district registrar of all births and deaths.

Paragraph 3

142. Section 38 of the Constitution provides that:

> "(1) subject to the provisions of subsections (2) and (3), every person born in Lesotho after the coming into operation of this Constitution shall become a citizen of Lesotho.
>
> "(2) save as provided in subsection (3) a person shall not become a citizen of Lesotho by virtue of this section if at the time of his birth neither of his parents is a citizen of Lesotho; and:

"(a) one or both of his parents possess such immunity from suit and legal process as is accorded to the envoy or a foreign sovereign power accredited to Lesotho; or

(b) one or both of his parents is an enemy alien and the birth occurs in a place under occupation by the enemy.

"(3) A person born in Lesotho on or after the coming into operation of this Constitution who is disqualified to become a citizen of Lesotho by virtue of subsection (2) of this section shall become a citizen of Lesotho if he would otherwise become stateless."

143. Section 39 states that a person born outside Lesotho after the coming into operation of the Constitution shall become a citizen of Lesotho at the date of his birth if at that date either of his parents is a citizen of Lesotho otherwise than by descent.

Article 25

144. Section 29 of the Constitution provides that:

"(1) Lesotho shall endeavour to ensure that every person has the opportunity to gain his living by work which he freely chooses or accepts.

"(2) Lesotho shall adopt policies aimed at:

"(a) achieving and maintaining as high and stable a level of employment as possible;

"(b) providing technical and vocational guidance and training programmes; and

"(c) achieving steady economic, social and cultural development and full productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

Paragraphs (a) and (b)

145. The Constitution provides in section 20 (1) that every citizen of Lesotho shall enjoy the right:

"(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

"(b) to vote or to stand for election at parodic elections under this Constitution under a system of universal and equal suffrage and secret ballot;

"(c) to have access, on general terms of equality, to the public service."

146. In March 1993 general elections were held and a democratically elected Government came into being. Subsequent by-elections were also held in three constituencies. All these were held under democratic conditions, which ensured free and fair conditions.

147. In order to continue to ensure that elections are free and fair, the Government agreed to establish an Independent Electoral Commission as suggested by opposition parties and the Lesotho Council of NGOs. The Second Amendment to the Constitution Act No. 7 of 1997 provides for the establishment of an Independent Electoral Commission. Section 6 amends section 66 of the Constitution. It provides that there shall be an Independent Electoral Commission which shall consist of the following members, being persons of high moral character and proven integrity, appointed by the King acting in accordance with the advice of the Council of State:

(a) A chairman, being a person who holds, has held or qualifies to hold high judicial office; and

(b) Two other members, each of whom possesses any of the qualifications referred to in paragraph (a) or who possesses considerable experience and demonstrated competence in administration or in the conduct of public affairs.

148. Section 7 of the Second Amendment to the Constitution Act No. 7 of 1997 amends section 66 of the Constitution by adding section 66 A, 66 B, 66 C and 66 D. Section 66 A (1) states that the Electoral Commission shall have the following functions:

"(a) to ensure that elections to the National Assembly and local authorities are held regularly and that every election or referendum held is free and fair;

"(b) to organize, conduct and supervise, in an impartial and independent manner, elections to the National Assembly and referenda under the provisions of this Constitution and any other law;

"(c) to delimit the boundaries of constituencies in accordance with the provisions of this Constitution and any other law;

"(d) to supervise and control registration of electors;

"(e) to compile a general register of electors and constituency registers of electors for the several constituencies and to maintain such register or registers up to date;

"(f) to promote knowledge of sound democratic electoral processes;

"(g) to register political parties;

"(h) to ascertain, publish and declare the results of elections and referanda;

"(i) to adjudicate complaints of alleged irregularities in any respect of electoral or referendum process at any stage other than in an election petition; and

"(j) to perform such other functions as may be prescribed by or under any law enacted by Parliament."

Section 66 C provides for the independence of the Electoral Commission. It states that the Electoral Commission shall not, in the performance of its functions, be subject to the direction or control of any person or authority.

149. In 1995 Development Council elections were held under the Development Council Order No. 18 of 1991 as amended. This was another chance for the people of Lesotho to elect their own representatives to Development Councils. The Chiefs and the rest of the population are being sensitized about the role of the Development Councils and it is anticipated that perceived fears from certain quarters will be allayed.

Paragraph (c)

150. Section 136 (1) of the Constitution provides for the Public Service Commission. It states that there shall be a Public Service Commission, which shall consist of a Chairman and not less than two, nor more than four, other members, who shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission. Subsection (11) provides that the Commission shall, in the exercise of its functions, not be subject to the direction or control of any other person or authority. This therefore makes it independent in its work as provided under section 137 (1).

Article 26

151. The Constitution provides under section 19 that every person shall be entitled to equality before the law and to the equal protection of the law. Despite this constitutional provision, our Roman Dutch Law permits discrimination against women as being minors. The same obtains under Sesotho customary law, which relegates women to perpetual minority. This discrimination has been noted and the Government is desirous of redressing the situation by bringing about modifications and changes in ways compatible with the Constitution and the social and cultural context of Lesotho.

Article 27

152. The Basotho nation is largely made up of Sotho-speaking people, with one language (Sesotho) spoken throughout the country. There is a small minority of Nguni-speaking Basotho. The Nguni-speaking Basotho are bona fide Lesotho citizens. They are not discriminated against in any way, and are free to speak Nguni languages and practice Nguni culture. The same could be said about the Basotho of Indian, Caucasian and other African origins.

List of annexes*

Statutes and legal instruments referred to

The 1993 Constitution of Lesotho

Criminal Procedure and Evidence Act 1981

Police Order 1971

Finance Order No. 6, 1988

State of Emergency Order No. 1, 1970

Constitution Suspension Order No. 2, 1970

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National Assembly Election Order No. 10, 1992

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Lesotho Highland Development Authority Order 23, 1986

Customs Proclamation No. 67, 1956

Land Act No. 17 of 1979

Land Amendment Order, 1986

Aliens Control Act No. 16, 1966

Labour Code Order No. 24, 1992

Children's Protection Act No. 6, 1980

Dangerous Medicines Act

Legal Aid Act No. 19, 1978

Societies Act No. 20, 1966

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Legal Notice No. 22, 1995 (Labour Code Order Amendment)

Second Amendment to the Constitution Act No. 7, 1997

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Lesotho Media Policy, June 1997